

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chase Manhattan Capital Corporation :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1970, 1971, 1972 & 1973. :
_____ :

AFFIDAVIT OF MAILING

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon Chase Manhattan Capital Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Chase Manhattan Capital Corporation
One Chase Manhattan Plaza
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
9th day of November, 1984.

David Parchuck

David M. M. M.

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Chase Manhattan Capital Corporation :
for Redetermination of a Deficiency or Revision :
of a Determination or Refund of Corporation :
Franchise Tax under Article 9A of the Tax Law for :
the Years 1970, 1971, 1972 & 1973. :

AFFIDAVIT OF MAILING

State of New York }
ss.:
County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 9th day of November, 1984, he served the within notice of Decision by certified mail upon Michael J. Close, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Michael J. Close
Dewey, Ballantine, Bushby, Palmer & Wood
140 Broadway
New York, NY 10005

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
9th day of November, 1984.

David Parchuck

William A. Hapalus
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

November 9, 1984

Chase Manhattan Capital Corporation
One Chase Manhattan Plaza
New York, NY 10005

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 1090 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Michael J. Close
Dewey, Ballantine, Bushby, Palmer & Wood
140 Broadway
New York, NY 10005
Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petitions	:	
	:	
of	:	
	:	
CHASE MANHATTAN CAPITAL CORPORATION	:	DECISION
	:	
for Redetermination of Deficiencies or	:	
for Refunds of Franchise Tax on Business	:	
Corporations under Article 9-A of the	:	
Tax Law for the Years 1970, 1971, 1972	:	
and 1973.	:	

Petitioner, Chase Manhattan Capital Corporation, One Chase Manhattan Plaza, New York, New York 10005, filed petitions for redetermination of deficiencies or for refunds of franchise tax on business corporations under Article 9-A of the Tax Law for the years 1970, 1971, 1972 and 1973 (File No. 20792).

A formal hearing was held before James T. Prendergast, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on August 20, 1979 at 1:35 P.M. Petitioner appeared by Dewey, Ballantine, Bushby, Palmer & Wood, Esqs. (Michael J. Close and Keith G. McWalter, Esqs., of counsel). The Audit Division appeared by Peter Crotty, Esq. (Frank Levitt, Esq., of counsel).

ISSUE

Whether petitioner may exercise the right of election under section 210.6 of the Tax Law to apply its investment allocation percentage to its total business and investment capital in a year during which it sustained a net operating loss.

FINDINGS OF FACT

1. Petitioner, Chase Manhattan Capital Corporation ("CMCC"), filed timely New York State corporation franchise tax reports for the years 1970 through 1973.

2. The Audit Division issued Statements of Audit Adjustment and Notices of Deficiency for each of the abovementioned years as follows:

<u>Year</u>	<u>Date of Notice of Deficiency</u>	<u>Tax</u>	<u>Interest</u>	<u>Total</u>
1970	5/15/74	\$1,599.30	\$303.87	\$1,903.17
1971	7/15/74	1,107.34	143.95	1,251.29
1972	1/8/76	880.00	175.12	1,055.12
1973	5/6/77	<u>800.05</u>	<u>188.37</u>	<u>988.42</u>
Totals		\$4,386.69	\$811.31	\$5,198.00

3. CMCC filed petitions for redetermination of said deficiencies in a timely manner.

4. Prior to the formal hearing, the Audit Division withdrew the claimed deficiency for 1972.

5. CMCC is a small business investment company under the Small Business Investment Act of 1958 and is organized for the purpose of investing its funds in securities in order that it can provide a source of equity capital for incorporated and unincorporated small business concerns.

6. CMCC sustained net operating losses for the years at issue, as reflected in its Corporation Franchise Tax Reports:

<u>Year</u>	<u>Net Operating Loss</u>
1970	\$ 584,010.99
1971	1,930,122.65
1973	3,252,381.89

7. Said reports showed investment losses for 1971 and 1973 in the amounts of \$856,543.21 and \$3,106,731.69, respectively; expenses attributable to investment income far outweighed the investment income.

The 1970 report showed investment income in the amount of \$1,109,526.04, but did not contain a comparable schedule indicating expenses attributable to investment income.

8. During the years at issue, petitioner's investment capital constituted the following percentages of its total business and investment capital:

<u>Year</u>	<u>Investment Capital</u>	<u>Total Business and Investment Capital</u>	<u>Percent</u>
1970	\$13,059,890.22	\$14,801,862.25	88.23
1971	19,919,494.40	20,932,421.44	95.16
1973	30,730,656.71	31,287,433.21	98.22

9. Petitioner chose to exercise the right of election given by section 210.6 of the Tax Law and applied its investment allocation percentage, for each of the years in question, to both its investment and business capital.

10. The Audit Division disallowed petitioner's election, stating that a corporation which sustains a business loss must allocate its business capital by the business allocation percentage and its investment capital by the investment allocation percentage, for the purpose of computing tax on capital allocable to New York.

CONCLUSIONS OF LAW

A. That section 210.6 of the Tax Law provides in pertinent part:

"Any taxpayer not taxed upon the basis of a combined report, the investment income of which is more than eighty-five per centum of its entire net income and the investment capital of which is more than eighty-five per centum of its total business and investment capital, may at its election apply its investment allocation percentage to its entire net income and its total business and investment capital."

Section 210.6 as enacted in 1944 required only that the taxpayer's investment income exceed 85 percent of its total income. Because corporations to which the election was not intended to be available were reaping the benefits thereof, an amendment adding the 85 percent capital test was adopted in 1945 in order to limit eligibility for the election to corporations which were predominantly investment corporations.

One of the general aims of the "new" Article 9-A adopted in 1944 was to so devise the allocation formulae and tax schedules that the tax burden would rest most lightly on corporations which were predominantly holding corporations and only slightly less so on corporations which were predominantly investment trusts. Report to the Honorable Thomas E. Dewey, Governor, by the State Tax Commission and Advisory Group, November 12, 1943, p. 8.

Further, the purpose of the election given by section 210.6 was to simplify the tax computation and thereby eliminate the expense to an investment corporation of calculations involving the business allocation percentage. The current regulation on point states in part:

"The purpose of this provision is to allow a taxpayer which is predominantly an investment corporation to allocate its entire net income and its total business and investment capital by its investment allocation percentage." 20 NYCRR 4-7.1(b), effective for taxable years beginning on or after January 1, 1976.

B. That 20 NYCRR 4.40(c), (Ruling of State Tax Commission, March 14, 1962), effective during the years in question, provided:

"If the investment income (before allowance of any net operating loss deduction) of a taxpayer not reporting on a combined basis is more than 85% of its entire net income (before allowance of any net operating loss deduction) and its investment capital is more than 85% of its total business and investment capital, it may elect to allocate its entire net income and total business and investment capital by the investment allocation percentage. In other cases, a taxpayer which has both business and investment capital, but has only investment income or has investment income and a business loss, allocates its

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entire net income and its investment capital by the investment allocation percentage. Its business capital is allocated by the business allocation percentage."

Because petitioner sustained business losses and investment losses in the relevant years in question, petitioner had no entire net income. The first half of the 85 percent rule, set forth in Tax Law section 210.6 and regulation section 4.40(c), is thus not met, and petitioner is not entitled to the election to apply its investment allocation percentage to its business and investment capital. It should also be noted that the second and third sentences of regulation section 4.40(c) do not cover the present situation, in which petitioner had both investment losses and business losses.

C. That the petition of Chase Manhattan Capital Corporation is denied; the Notice of Deficiency issued January 8, 1976 is cancelled in accordance with Finding of Fact "4"; and the Notices of Deficiency issued May 15, 1974, July 15, 1974 and May 6, 1977 are in all respects sustained.

DATED: Albany, New York

STATE TAX COMMISSION

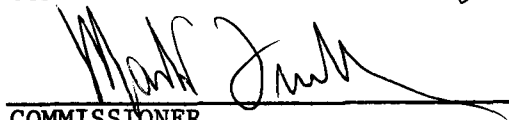
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PRESIDENT



COMMISSIONER



COMMISSIONER